



The City of London Law Society



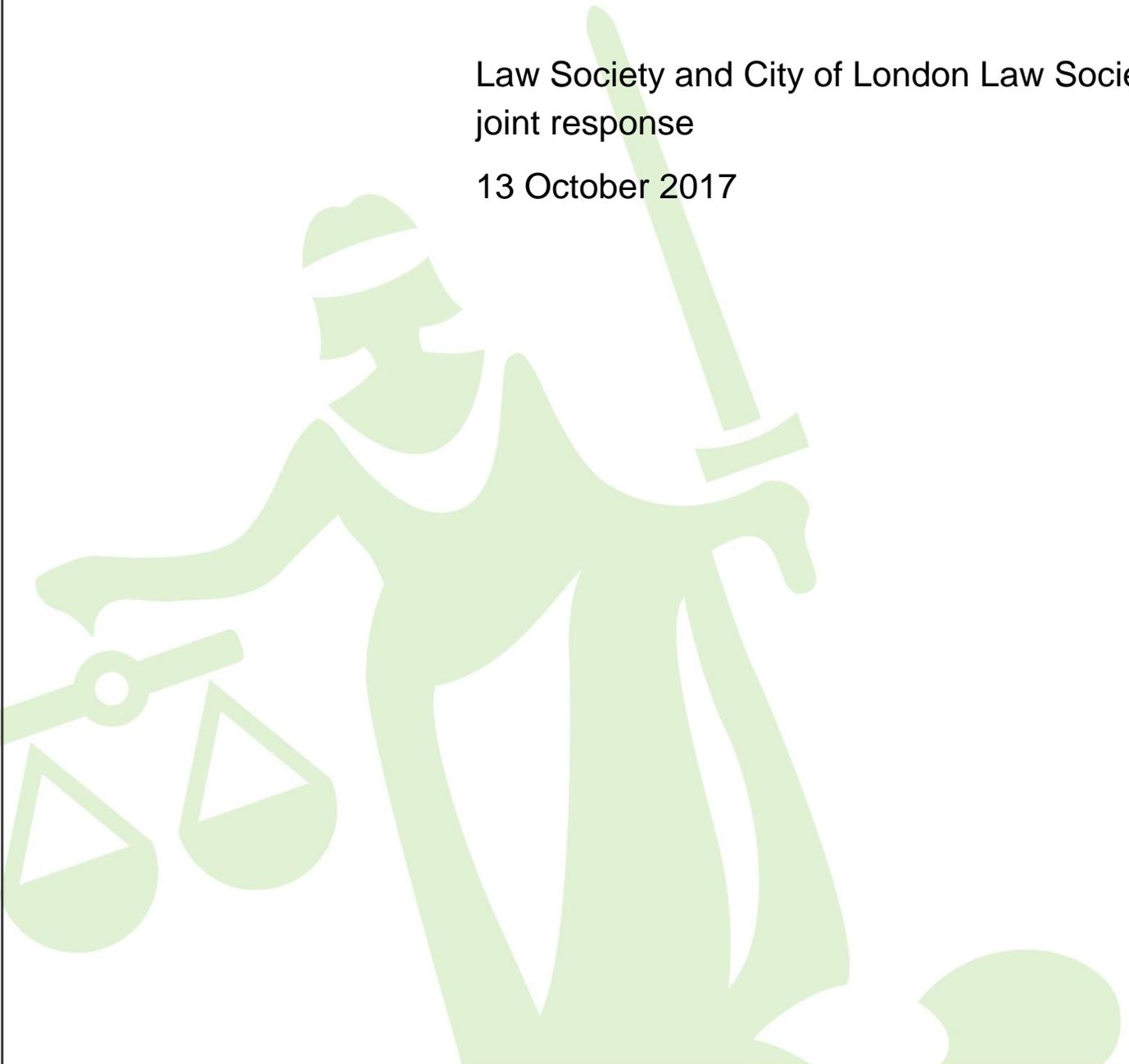
The Law Society

FCA Consultation Paper (17/21):

**Proposal to create a new premium
listing category for sovereign controlled
companies**

Law Society and City of London Law Society
joint response

13 October 2017



Introduction

1. The views set out in this paper have been prepared by a Joint Working Party of the Company Law Committees of the City of London Law Society (**CLLS**) and the Law Society of England and Wales (the **Law Society**).
2. The CLLS represents approximately 17,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multijurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees.
3. The Law Society is the professional body for solicitors in England and Wales, representing over 170,000 registered legal practitioners. It represents the profession to Parliament, Government and regulatory bodies in both the domestic and European arena and has a public interest in the reform of the law.
4. The Joint Working Party is made up of senior and specialist corporate lawyers from both the CLLS and the Law Society who have a particular focus on issues relating to capital markets.

Response

5. We set out our response to the questions in Annex 1 of the FCA Consultation Paper: Proposal to create a new premium listing category for sovereign controlled companies (CP 17/21).

Q1 Do you agree with the overall proposal outlined in this paper of creating a premium listing category for sovereign controlled companies?

6. We do not have any general comments on the overall proposal but we set out some specific comments on some aspects in our responses to the questions below.

Q2 Do you agree that the changes proposed are best effected through the addition of a new listing category?

7. Yes.

Q3 Do you agree that the threshold for control should be set at 30%?

8. Yes, we believe that it makes sense to align the threshold for control with the 30% threshold which is set out in the definition of 'controlling shareholder' in LR 6.1.2AR.

Q4 Do you agree that eligibility for the new category should not be restricted on grounds of national identity of the controlling shareholder? Do you agree that it should also not be restricted on grounds of country of incorporation of the company?

9. Yes, we agree with the reasoning set out in the consultation paper.

Q5 Do you agree that independent shareholder approval should be required for a transfer from an existing premium listing into the new category?

10. Yes.

Q6 Do you agree that the sovereign controlling shareholder should not be considered a related party for the purposes of the Listing Rules?

11. We understand the FCA's rationale behind its proposal for a new listing category and further note its arguments for excluding transactions between an issuer and its sovereign controlling shareholder from the Listing Rules which apply to related party transactions.
12. We note the comment in the consultation paper that, when making an investment in a sovereign controlled company, an investor is making a judgment about how the sovereign will interact with that company. However, the same point could be made as regards any listed company with a controlling shareholder. We can see that there might be some concern that the removal of this protection could potentially lead to inappropriate dealings between the sovereign shareholder and the listed entity which could damage the reputation of the Official List and the London Stock Exchange. This aspect is a policy matter and we recognise that there are major overseas listing exchanges which do not regulate related party transactions. If the proposed changes are implemented, that will perhaps increase the responsibility of the FCA when vetting such companies at the eligibility stage of an admission and, following admission, place a greater responsibility on the board (and in particular, the independent directors) to ensure that any dealings between the listed company and the sovereign are on arm's length commercial terms and that the day-to-day conduct of the business is consistent with good corporate governance.
13. See also our response to Q7 below.

Q7 Do you agree that MAR-mandated disclosures are sufficient to secure the necessary at-the-time transparency?

14. In addition to MAR-mandated disclosures, the FCA should consider requiring a sovereign controlled company to announce details of a related party transaction with its sovereign controlling shareholder where it would have been required to do so had the transaction been subject to Chapter 11 of the Listing Rules. We consider that this would promote an appropriate level of transparency for shareholders.

Q8 Do you agree that controlling shareholder provisions should not apply in respect of the sovereign controlling shareholder for companies listed in this category?

15. Yes. See also our responses to Q6 and Q7 above.

Q9 Do you agree that DRs over equity shares should be eligible for this category?

16. We do not have any comments other than noting that, given that the provisions relating to certificates in public hands is drafted so as to relate to the DRs rather than on a see-through basis to the underlying equity shares, a sovereign controlled company will be able to obtain a premium listing with a very small free float of its capital, but we appreciate that that is a policy decision.

Q10 Do you agree that full pass-through of voting and other rights on the basis described should be a requirement for eligibility of DRs for listing in the proposed category?

17. Yes.

Q11 Do you agree with the proposed consequential changes to the Listing Rules and to the Fees manual set out in Appendix 1?

18. We have some comments on the proposed consequential drafting changes to the Listing Rules as set out in Appendix 1:

- We query whether LR 21.4.3R(2) should also refer to LR9.8.4R(10). Is it intended that a contract of significance between a listed company (or one of its subsidiary undertakings) and a sovereign controlling shareholder should be disclosed in a company's annual financial report?
- For completeness, we query whether LR 21.5.2R (or elsewhere in LR 21) should clarify that LR 13.6 (related party circulars) would also not apply to transactions with a sovereign controlling shareholder?
- We suggest that the definition of 'State' might be clearer if it is amended to read:

"State means:

(a) the sovereign or other head of a State in his or her public capacity;

(b) the government of a State;

(c) a department of a State; or

(d) an agency or special purpose vehicle of a government or department of a State,

where in the case of each of (a)-(d), the relevant State is the UK or is recognised by the government of the UK as a sovereign State at the time when the application is made."

FOR FURTHER INFORMATION PLEASE CONTACT:

Officer's Name:	Olu Oluwole
Officer's Title:	Policy Adviser
Officer's Email address:	Olufola.Oluwole@LawSociety.org.uk
Officer's Telephone number:	02073205782